

**IN THE UNITED STATES DISTRICT COURT
FOR THE MIDDLE DISTRICT OF TENNESSEE
COLUMBIA DIVISION**

JOHN DOE
Plaintiff,

v.

BRIAN SPENCER and
FICTITIOUS PERSONS 1-10
Defendants.

CIVIL ACTION NO. 1:23-cv-00002
DISTRICT JUDGE CAMPBELL
MAGISTRATE JUDGE HOLMES
JURY TRIAL DEMANDED

**RESPONSE TO DEFENDANT'S MOTION TO STRIKE PLAINTIFF'S
APPLICATION FOR ENTRY OF DEFAULT**

COMES NOW, the Plaintiff, JOHN DOE, by and through counsel, in response to the Defendant's most recent motion dated May 20, 2024 (Document No. 72), and in support thereof states as follows, to-wit:

1. LR 55.01 governs the filing of motions for entry of default in this Court.

LR 55.01 states:

Motions for entry of default under Fed. R. Civ. P. 55(a) must be accompanied by an unsworn declaration under penalty of perjury under 28 U.S.C. § 1746 verifying: (i) proof of service; (ii) the opposing party's failure to plead or otherwise defend; (iii) if the opposing party is an individual, that the opposing party is not a minor or incompetent person; and, (iv) if the opposing party is an individual, that the opposing party is not in the military service, as required by 50 U.S.C. § 3931(b)(1). Evidence from the Defense Manpower Data Center, or other reliable source, confirming that the opposing party is not in the military service must be appended to the unsworn declaration.

2. Pursuant to the foregoing rule, evidence that the Defendant is not in the military must be attached to any application seeking entry of default. Typically, this information comes from the Defendant Manpower Data Center, specifically the

Servicemen and Sailors Relief Act Portal. However, as stated in Plaintiff's Application for Entry of Default (Document No. 71), the undersigned counsel could not access the Servicemen and Sailors Relief Act Portal because he did not have the Defendant's date of birth. Fortunately, because Defendant had freely selected of his own volition to use his work email address—as opposed to his personal email account—to receive Court emails via the CM/ECF system, Defendant deliberately placed his employer's name on the Court docket. From this, the undersigned could glean that Defendant's company, Crown Castle, is a civilian company. Thus, the undersigned reasoned that Defendant's company's website would be “[an]other reliable source,” LR 55.01, to show that Defendant is not in the military. That was the only reason for incorporating this information into the motion.

3. Plaintiff would note that Defendant's instant motion is quite telling. He has time to file a motion to object to Plaintiff's use of his company information in the application for entry of default, yet he does not address the substance of the motion, nor does he even attempt to file an answer out of time. Instead, he speaks of having filed a motion seeking to stay the proceedings, even though the Court has ordered, **“Defendant must file his answer by May 15, 2024. No further extension will be granted.”** (Document No. 68. Emphasis in Original.)

4. Defendant's recent motion is just another attempt to delay the matter so he will not have to accept responsibility. Therefore, it should be denied.

WHEREFORE, PREMISES CONSIDERED, the Plaintiff, JOHN DOE, moves this Honorable Court to deny the Defendant's recent motion (Document No. 72).

Respectfully submitted on this the 20th day of May 2024,

JOHN DOE

/s/Matthew Wilson

Matthew Wilson

Prepared by:
Matthew Wilson (TN BPR 028175)
The Law Office of Matthew Wilson
2218 W. Main Street, Suite B
Tupelo, MS 38801
Telephone: (662) 260-6544 / Facsimile: (662) 546-4893
lawyermatt@betteraskmatt.com

CERTIFICATE OF SERVICE

I, Matthew Wilson, hereby certify that a true and exact copy of the foregoing was filed and served by operation of the Court's ECF/PACER system on this the 20th day of May 2024, upon

Brian Spencer
brian.spencer@crowncastle.com

JOHN DOE

/s/Matthew Wilson

BY: _____
Matthew Wilson (TN BPR 028175)